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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,461	02/26/2008	Jee Loon Look	PCFC-281-101 (PC62764)	2119
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ROPES & GRAY LLP PATENT DOCKETING 39/361 1211 AVENUE OF THE AMERICAS NEW YORK, NY 10036-8704			EXAMINER HILL, MYRON G	
			ART UNIT	PAPER NUMBER
			1648	
			NOTIFICATION DATE	DELIVERY MODE
			03/03/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPatentMail@ropesgray.com
USPatentMail2@ropesgray.com

Office Action Summary

Application No.

10/582,461

Applicant(s)

LOOK ET AL.

Examiner

MYRON G. HILL

Art Unit

1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) 43,46,48-50,54,55,60-63,86,105 and 122-124 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,5,6,8,11,13,18,22-25,30,33,35,37,41 and 42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 6/12/06 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (P-TO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Continuation of Disposition of Claims: Claims pending in the application are 1,3,5,6,8,11,13,18,22-25,30,33,35,37,41-43,46,48-50,54,55,60-63,86,105 and 122-124.

DETAILED ACTION

This action is in response to the papers filed 12/10/10 and is on claims 1, 3, 5, 6, 8, 11, 13, 18, 22-25, 30, 33, 35, 37, 41, and 42.

Rejections Withdrawn

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 3, 5, 6, 8, 11, 13, 22-25, 30, 33, 35, 37, 41, and 42 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It was not clear what the metes and bounds are of the term "stable". There is no indication as to the level of stability that is required of the claims.

Applicant has amended the claims and the rejection is withdrawn.

Rejections Maintained

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 3, 5, 6, 8, 11, 13, 18, 22-25, 30, 33, 35, 37, 41, and 42 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. This is a rejection on the freeze dried virus used in the method.

Applicant argues it as a written Description and enablement rejection because applicant states that the rejection sounds more like enablement.

Applicant states that the specification discloses the method using two viruses and asserts the examiner is wrong in characterizing Tannock *et al.* as teaching some RSV is not stabilized.

Applicant's arguments have been fully considered and not found persuasive.

The examiner points to Tannock *et al.* to show that there is a wide range of stability in different RSV strains stabilized and that the strains used in Table 2 do not have the same level of stability. The claimed method uses a range of different virus types and there is no teaching in the specification of the range of virus that all have the stability required of the product of the claimed method.

The rejection is maintained.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 5, and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Tannock et al. (from IDS).

Applicant argues that that the claims are drawn to a method not a product and that the cited art must disclose each and every step.

Applicant's arguments have been fully considered and not found persuasive.

Applicant has not differentiated the claimed method. The examiner set forth reasons why the method appeared to be the same and shifted the burden to applicant to differentiate the methods. The fact that *In re Best* refers to a product does not preclude it from being used in anticipating a method. The virus used, the buffer used, the step of freeze drying used and stability of the product of the method appear to be the same in the prior art as claimed.

Thus, Tannock et al. anticipate the claimed invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 5, 6, 8, 11, 18, 22-25, 30, 33, 35, 41, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tannock *et al.* (from IDS) and Parrington *et al.* (WO 02/09747 from IDS).

Applicant argues that there is no motivation to combine and that proteins and virus are different.

Applicant's arguments have been fully considered and not found persuasive.

Applicant's reason for not combining because proteins and virus are different is not persuasive for the following reasons: one of ordinary skill in the art would have known that each virus is composed of one genomic segment and many proteins to form the nucleocapsid and the particle, and that protein needs to be stabilized to stabilize the virus. Parrington *et al.* teach in Figures 2 and 4 that unstabilized proteins are not reactive by ELISA or RIPA or western blot like stabilized proteins or like reference virus. One of ordinary skill in the art would know that degraded proteins would mean degraded in virions as well. The stabilized proteins appear to be like the frozen reference stock virus as shown in Parrington *et al.* Figures 2 and 4.

The rejection is maintained.

Claims 13 and 37 rejected under 35 U.S.C. 103(a) as being unpatentable over Tannock *et al.* and Parrington *et al.* as applied to claims 1, 3, 5, 6, 8, 11, 18, 22-25, 30, 33, 35, 41, and 42 above, and further in view of Suzuki.

Applicant argues that the combination of Tannock et al. and Parrington et al. fail to make the claims obvious as discussed above and the additional references do not remedy the deficit.

Applicant's arguments have been fully considered and not found persuasive.

Applicant's arguments concerning Tannock et al. and Parrington et al. have been discussed above and not found persuasive. The third reference is not needed to remedy the asserted failing of Tannock et al. and Parrington et al.

The rejection is maintained.

Conclusion

No claim is allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MYRON G. HILL whose telephone number is (571)272-0901. The examiner can normally be reached on M-Th and flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zachariah Lucas can be reached on 571-272-0905. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mary E Mosher/
Primary Examiner, Art Unit 1648

/M. G. H./
Examiner, Art Unit 1648